

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF OKLAHOMA

3 (1) UNITHERM FOOD SYSTEMS,)
4 INC., an Illinois corporation; and)
5 (2) JENNIE-O FOODS, INC., a)
6 Minnesota corporation,)
7 Plaintiffs,)
8 -vs-) No. CIV-01-347-C
9 (1) SWIFT-ECKRICH, INC. d.b.a)
10 ARMOUR SWIFT-ECKRICH, a)
11 Delaware corporation,)
12 Defendant.)

13 VIDEOTAPED DEPOSITION OF DAVID HOWARD

14 TAKEN ON BEHALF OF THE DEFENDANTS

15 IN OKLAHOMA CITY, OKLAHOMA

16 ON NOVEMBER 8, 2001

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22 CITY REPORTERS, INC.
23 117 PARK AVENUE, FIRST FLOOR
24 OKLAHOMA CITY, OKLAHOMA 73102
25 (405) 235-3376

REPORTED BY: Lori A. Johnston, CSR, RPR

EXHIBIT F

PTO-003170

1 A . . . s.

2 Q And when was that?

3 A Again, I first wrote to Hudson Foods, I believe, in 19 --
4 1994-1995, telling them that we had a process for rapidly smoking
5 and browning turkey products, that the shrink would be one percent,
6 et cetera. And indeed, that letter again is amongst the 5,000
7 documents that you have. So perhaps 1994-1995 is the first time
8 Hudson Foods are told of Unitherm. And it -- it may have included a
9 video. I can't recall if the letter says and we enclose a video.

10 Q Now, the -- my question was when did you disclose the
11 process to Hudson Foods?

12 A In detail, when they visited Unitherm.

13 Q Which was when?

14 A Perhaps 1996, I believe. Late 1996.

15 Q And then you sold them a RAPIDFLOW oven; is that
16 correct?

17 A I sold them a process, including a RAPIDFLOW oven.

18 Q Now, did Hudson Foods ever agree that they would keep
19 that process a secret?

20 A We -- when they came to Unitherm, each and every person
21 that visits Unitherm is told that there are certain trade secrets that
22 you will discover in our facility, and we -- we have expectations that
23 you will keep those as Unitherm's secrets.

24 Q Now, this is a -- is something that was said to Hudson
25 Foods?

1 A Yes.

2 Q This was oral and not in writing?

3 A Well, at the time we also had confidentiality agreements
4 that required signing. I don't recall whether Hudson Foods signed
5 them or not or whether we still have them or not.

6 Q Do you know whether they signed such an agreement?

7 A It's my expectation they would have, but I -- I don't know
8 off the top of my head.

9 Q You really don't know?

10 A Jerry Adams was the salesman who handled their account
11 in the initial stages. It would have been his responsibility to make
12 sure that they did.

13 Q But whether he did that or not, you don't know?

14 A I don't know.

15 Q All right. And if there was any oral agreement with
16 Hudson Foods, you can't tell us what it was?

17 A Yes. If there's an oral agreement, it's not made by Jerry
18 Adams. It's made by me.

19 Q Well, was there an oral agreement?

20 A Yes, there was.

21 Q There was an oral agreement between you and Hudson
22 Foods?

23 A As I introduced Unitherm to all visitors that came to the
24 facility, they were brought to the boardroom. They were given a
25 short history of Unitherm. And then they were told in that speech

1 that Unitherm was an innovative company and that there are trade
2 secrets that are specifically ours and we ask them to respect that.

3 Q And do you remember saying that to -- to Hudson Foods?

4 A That's correct. Yes.

5 Q And who did you say it to at Hudson Foods?

6 A I believe present at the time was a gentleman called
7 Andrew Cobb.

8 Q I'm sorry? Could you --

9 A Andrew Cobb.

10 Q What -- how -- how's -- how do you spell the last name?

11 A C-o-b-b.

12 Q C-o-b-b?

13 A Uh-huh.

14 Q So you told Mr. Cobb that you wanted him to keep your
15 trade secrets?

16 A I told -- I told the Hudson Food party that was there. I
17 think there was about four people there.

18 Q And what else did you tell them with regard to keeping
19 things secret other than you wanted them to keep your trade secrets
20 a secret?

21 A I -- I don't recall anything else.

22 Q You don't recall anything else --

23 A No.

24 Q -- at all about that agreement?

25 A No.

1 Q Did you identify for them what these trade secrets were?

2 A I don't recall if I did or did not.

3 Q Was there any time limit on this agreement?

4 A When I asked them to keep a Unitherm secret or any

5 secret they pick up, it's my expectation it's forever.

6 Q So it was your expectation that Uni -- that Hudson Foods

7 would keep as a secret forever some things that they learned from

8 Unitherm?

9 A Yes.

10 Q And you didn't identify for them what it was that they

11 were to keep a secret forever?

12 A I don't recall if I identified it or not.

13 Q And there's nothing in writing to evidence this?

14 A I don't recall if they signed confidentiality agreements.

15 They may well have done.

16 Q Now, you said that between '93 and '97, Unitherm and

17 Red Arrow made presentations to about 20 potential customers; is

18 that right?

19 A No. I said we made one formal presentation to Armour

20 Swift-Eckrich, and the rest of the time, we demonstrated the process.

21 Q All right. You made 20 demonstrations then; is that

22 correct?

23 A That's a fair comment. Yes.

24 Q Now, in the course of those demonstrations, the -- the

25 companies that you were demonstrating the process to learned what

1 the process was; is that right?

2 A Yes. They would have.

3 Q And the demonstrations were made to their people who
4 were technically oriented, either production people or research
5 people; is that right?

6 A Yes.

7 Q So they were certainly fully capable of understanding this
8 process?

9 A Yes.

10 Q Now, did those 20 companies sign agreements to keep
11 that process confidential?

12 A I believe that they did sign confidentiality agreements.

13 Q All of them?

14 A I -- I believe so.

15 Q And did you keep copies of those agreements?

16 A Well, we did keep copies of them. I am un-- unaware of
17 where those records are today.

18 Q Have you -- among these what you call 5,000 documents
19 that you've produced, are those agreements included?

20 A There are some confidentiality agreements signed that are
21 in those documents. Yes. And there are some that are, I believe, are
22 missing.

23 Q And why are they missing?

24 A Well, I believe that when we moved premises from
25 Chicago to Oklahoma, that they were mislaid.

1 Q Do you have a list anywhere of the companies who signed
2 these agreements?

3 A I do not.

4 Q So would it be fair to say that as of today, you -- you
5 don't know who has signed these agreements and who has not?

6 A No.

7 Q That would not be fair to say or you don't know?

8 A Well, since I was there at all the presentations, I would be
9 very much aware that those people would have been given a
10 confidentiality agreement to sign. And you know, we have one
11 confidentiality agreement that exists from that period, from 1993-'94,
12 that -- that era when we were in Chicago. And it's one that was
13 signed with another salesman that had worked for us, a gentleman
14 called Bobby Cox, and one of his clients. And it didn't involve the
15 process. And I believe that all of the confidentiality agreements that
16 were signed in regard to visiting and looking at the RAPIDFLOW kept
17 separate from that. And we have mislaid them.

18 Q So there would be approximately -- well, let me tell you, in
19 going through the documents, we haven't found any confidentiality
20 agreements that are dated earlier than 1997. So the conclusion I am
21 drawing from your testimony here is that there are at least 20 of
22 these agreements that you no longer have; is that correct?

23 A That's correct.

24 Q But you believe that these agreements at one time
25 existed?

1 A Yes. Absolutely.

2 Q Did you have an agreement like that with Hudson?

3 A When Hudson visited Unitherm?

4 Q Yes.

5 A It would be my expectation that they would have signed a

6 confidentiality agreement and that Jerry Adams would have taken

7 care of that.

8 Q Did you attend the Hudson deposition?

9 A I did not. No.

10 Q Do you know that Hudson said that they don't have a

11 confidentiality agreement with Unitherm?

12 A I did not.

13 Q Well, if they said that, are they lying?

14 A I don't know.

15 Q How about Allen Johns? You disclosed the process to

16 them, didn't you?

17 A We did, yes.

18 Q In New Jersey?

19 A We did, yes.

20 Q So they know what that process is; correct?

21 A Yes.

22 Q Did they sign a confidentiality agreement?

23 A I don't know.

24 Q Now, when was that disclosure made?

25 A I believe it may have been whilst they were in the UK. Or

1 and browning process. They did not come to look at anything else at
2 Unitherm. And it was my view at that time that it was to cover that
3 process.

4 Q Now, isn't it true that that agreement that was signed in
5 '98 was to cover anything new that they learned at the time of their
6 visit to Unitherm in 1998, and not things that they had already known
7 for five years?

8 A No.

9 Q So you believe that the '99 -- that the 1998 agreement
10 required Swift-Eckrich to keep secret things that they had learned in
11 '93; is that correct?

12 A Yes. When I told Chris and Prem before they arrived that I
13 would expect them to sign a confidentiality agreement for this whole
14 process, then that's what I expected.

15 Q Now, if Swift-Eckrich had learned this information in '93
16 and wasn't under any obligation of confidentiality until '98, wouldn't
17 you expect that there would be a lot of people who would have
18 learned of this from Swift-Eckrich during that five-year period?

19 A I never said they weren't under any obligation.

20 Q But if they weren't, then there was no way to put the
21 toothpaste back in the tube, was there?

22 A In my view, they were under obligation.

23 Q And that's because you assume there was an agreement,
24 but you're not sure there was an agreement and you don't have a
25 copy; right?

1 A I'm pretty sure there was an agreement. I don't have a
2 copy of it.

3 Q Now, when you met with Swift-Eckrich, did you agree that
4 you would keep secret information that they had?

5 A When?

6 Q At any time?

7 A I believe that I signed a confidentiality agreement of theirs
8 at one point.

9 Q And when was that? Do you recall?

10 A I don't recall.

11 Q Do you recall the circumstances?

12 A I believe when I visited their premises in Downers Grove at
13 one point.

14 Q Do you -- do you have any idea what the date was?

15 A No, I don't.

16 Q How many times have you been to their premises in
17 Downers Grove?

18 A I guess perhaps 20, 25 times.

19 Q You were first there in '93?

20 A I don't think I visited their premises in '93 at all.

21 Q When -- when were you there for the first time?

22 A I believe the first time I visited their premises was in 1995.

23 Q Was that when you signed the agreement to keep
24 confidential information that they had?

25 A I can't recall.

1 Q . And what was his position when you dealt with him at
2 Thorn Apple Valley?

3 A I'm not sure of what his actual title was. As a machinery
4 company selling to Thorn Apple Valley, he was -- by all extents, he
5 was the -- the boss, the president, if you like. I don't know what his
6 title was, but he was the guy who made the decisions and looked at
7 what was available in the market. And we regarded him as perhaps
8 the most senior executive.

9 Q Did your browning -- was your browning process disclosed
10 to Thorn Apple Valley while -- while Mr. Mickelberg was there?

11 A Yes. In 1993, I believe March or April, there's a letter
12 again in the documents provided. It's written to a gentleman called
13 Elie Dorfman which refers to the fact that we have this process that
14 will rapidly smoke turkey or ham, or words to that effect.

15 Q And you did in fact disclose the process to Thorn Apple
16 Valley; is that right?

17 A We didn't go into any detail on the process, just that we
18 had this ability to do this and we used our RAPIDFLOW oven to do it.

19 Q You didn't tell Thorn Apple Valley how the process
20 worked?

21 A Not in detail. No.

22 Q Do you ever invite them to your facility?

23 A Thorn Apple Valley did come to our facility in Ponca City in
24 Oklahoma.

25 Q And did they see the process carried out?

1 that the benefit would be solely Thorn Apple Valley's.

2 Q Now, you said that there was an understanding with Thorn
3 Apple Valley processes would be kept secret; right?

4 A Well, I had a relationship with the boss of that company.

5 Q And that was --

6 A And --

7 Q -- Mickelberg?

8 A And -- and when he gave me his word and said this is a
9 process between us, sir, it's kept, I accepted his word.

10 Q Now, is it your recollection that Mr. Mickelberg personally
11 promised you that Thorn Apple Valley would keep your process a
12 secret?

13 A All of my processes secret. Yes.

14 Q That's not my question. My question is --

15 A This particular one, Mr. Mickelberg was no longer with
16 Thorn Apple Valley when the purchase was made.

17 Q Did Mr. Mickelberg ever promise that the process would be
18 kept a secret?

19 A This specific process?

20 Q Yes.

21 A I have no recollection of that.

22 Q Did anybody else for Thorn Apple Valley promise that this
23 process would be kept a secret?

24 A I'm not sure. And the reason why I'm not sure is there
25 was a conversation by which Unitherm would not reveal to a second

1 A He was, I think his title was vice president of purchasing.

2 Q And do you know where Mr. Weiss is today?

3 A I don't know where he is today. I can probably find out
4 where he is.

5 Q Now, did you ever have any discussions with
6 Mr. Mickelberg about information being kept secret?

7 A In -- in general in regard to Unitherm equipment?

8 Q Yes.

9 A Yes.

10 Q And did that cover the process in question?

11 A Yes. It would have covered all things that were innovative
12 from Unitherm. He would have had a vested interest in keeping it
13 secret --

14 Q I'm --

15 A -- as would we.

16 Q I'm not asking if he had a vested interest. I'm asking --

17 A Fair enough.

18 Q -- if he agreed to keep it secret?

19 A Yes.

20 Q So Mr. Mickelberg did, according to your recollection,
21 agree to keep information about this process secret when he was at
22 Thorn Apple Valley?

23 A I believe in his deposition he did say that Unitherm did
24 reveal se-- or he did keep Unitherm secrets confidential.

25 Q I'm not asking you if he kept them secret.

1 A Okay.

2 Q I'm asking if he promised to keep them secret?

3 A Yes, he did.

4 Q He did promise that?

5 A Yes.

6 Q But didn't you hear him say in his deposition that he didn't
7 promise to keep them secret?

8 A No. I heard him say he didn't sign a confidentiality
9 agreement.

10 Q Now, you dealt with Mr. Mickelberg when he was at Thorn
11 Apple Valley and then again when he was at Swift-Eckrich; correct?

12 A Yes.

13 Q Did you ever have any other business dealings with
14 Mr. Mickelberg?

15 A After he left Armour Swift-Eckrich.

16 Q Yes?

17 A I want to make sure I get the sequence correct here. I
18 don't know that after he left Armour Swift-Eckrich is the right phrase.
19 He -- when he wasn't working at the Downers Grove facility, he was
20 in charge of some operations in Europe. And there was one of those
21 facilities that was perhaps 20 miles from Unitherm's UK operation.
22 And we did sell a RAPIDFLOW oven to him for that facility.

23 Q Any other business --

24 A Yes.

25 Q -- with Mr. Mickelberg?

1 A When he finished with Conagra, he approached me to
2 consult -- all right. Sorry. He approached me to see if I knew
3 anybody that he could consult for in the United Kingdom or in Europe
4 generally. We took that opportunity to put him on a -- a retainer and
5 consult for Unitherm.

6 Q And how long did that arrangement last?

7 A I believe it lasted perhaps 14 or 15 months.

8 Q And that was over what period of time?

9 A It was from sometime in 1999, I think, up to 2000-
10 something.

11 Q And he was paid a monthly retainer; is that right?

12 A He was paid on a monthly basis.

13 Q And what was the pay?

14 A I think the sum agreed was \$1,500.

15 Q Any other business relationships with Mr. Mickelberg?

16 A No.

17 Q Was Mr. Mickelberg ever paid a sales commission?

18 A No.

19 Q Finder's fees?

20 A No.

21 Q Anything other than this \$1,500 per month?

22 A Absolutely not.

23 Q And that did not begin until 1999?

24 A That's correct.

25 Q Mr. Mickel-- did Mr. Mickelb rg ever have an interest in

1 Q . . . , all right.

2 A You asked me what products did I cook, and I told you
3 typical sausage. And you asked me did I put smoke on the products
4 that I cooked. Well, I didn't cook any of the products that I smoked
5 or browned to sell the oven for. They're already cooked.

6 Q All right. When you had the RAPIDFLOW oven at trade
7 shows between '93 and '99, did you, at those trade shows,
8 demonstrate the use of the RAPIDFLOW oven in a process that used
9 liquid smoke?

10 A I believe, on one occasion, we may have done.

11 Q What occasion was that?

12 A It was at a poultry show in I think 1997. I'm not 100
13 percent sure of that.

14 Q Could you tell us how -- how we could identify that show
15 by the name of the organization or whatever?

16 A It was the poultry show. The Georgia World Congress
17 Poultry Exhibition, I think it's called.

18 Q And that was -- is that in Atlanta?

19 A It's in Atlanta. Yes.

20 Q And you had a Uni -- a RAPIDFLOW oven there?

21 A Yes.

22 Q All right. And how -- was that enclosed in some sort of a
23 booth or was it out in the open, what?

24 A No. It was pretty open.

25 Q And -- and you demonstrated the use of the oven with

1 liquid smoke?

2 A We had planned to do demonstrations. The client that we
3 asked to supply us the product shipped the product to us in dry ice.
4 So when the exhibition started, the product was frozen, so we were
5 unable to run the demonstrations. I do know that, I believe towards
6 the end of that exhibition, we did run that product for a particular
7 client who wanted to see it. I believe that that was possible that we
8 did that.

9 Q And you did this at the trade show?

10 A I believe so.

11 Q So although it was done for a particular client, it was
12 available to be observed by other potential customers?

13 A I'm not sure. I -- I think that the salesman that was
14 involved at the time, as I understand it, we asked the client to come
15 back after the trade show had finished.

16 Q And who was the client?

17 A I don't recall.

18 Q Did that client sign any kind of confidentiality agreement?

19 A I don't recall.

20 Q So you may or may not have disclosed the process to this
21 unknown party without a confidentiality agreement?

22 A Yes. -

23 Q Now, you took the RAPIDFLOW oven to six to eight trade
24 shows during this '93 to '99 period; correct?

25 A Uh-huh.

1 Q And during that time period, 98 percent of the sales were
2 with liquid smoke?

3 A Yes.

4 Q But with the exception of this one instance that you've
5 told us about --

6 A Uh-huh.

7 Q -- you never demonstrated the oven with liquid smoke at
8 those trade shows; correct?

9 A I think that's correct. Yes.

10 Q Can you explain why it is that you didn't demonstrate the
11 oven for the purpose for which it was used 98 percent of the time?

12 A Well, the cost to have the oven operational at the show is
13 probably perhaps \$20,000. So on most of the occasions when we
14 took it to exhibitions, we did not pay to have the elec-- the electric
15 connected up to it, the extraction system run, so while the machine
16 was at the exhibition, it was not running.

17 Q But there were instances in which it was running; right?

18 A Certainly in -- in January 1992, at our first trade show in
19 Atlanta, it was running. I believe there was one other exhibition in
20 Atlanta at the same poultry show in 1998 where the machine was
21 running. And there may have been one in McCormick Place on one
22 other occasion when it was running.

23 Q So there were two or three instances in which the machine
24 was running at trade shows?

25 A Yes. Yes, there were.

1 Q . So they were certainly there sometimes when you did
2 remove the purge?

3 A Yes, they were.

4 Q And so they knew about that purge removal operation;
5 right?

6 A Yes, they did.

7 Q In fact, they knew exactly how you removed the purge;
8 isn't that right?

9 A Yes.

10 Q And they were under no obligation to keep that a secret;
11 right?

12 A No. I'm sorry. I can't agree to that. Anyone that visited
13 Unitherm, be it Red Arrow or Armour Swift-Eckrich or any client, we
14 told them that there are secrets that are Unitherm's and we intend --
15 we expect them to keep them secret.

16 Q Didn't you testify just a while ago that you had no
17 confidentiality agreement with Red Arrow?

18 A That's correct.

19 Q So Red Arrow was free to do what they wanted with that
20 information about the purge removal; isn't that right?

21 A No. Bob, it is my testimony here today that if I tell
22 somebody something and ask them to keep it a secret, that that
23 doesn't release them from their moral obligation of keeping it a
24 secret. Just like when Armour Swift-Eckrich took the patent, all right,
25 just because I didn't have a patent on it didn't mean they could go

1 and steal it. The fact is that the technology belongs to Unitherm. I
2 can't govern the behavior of other people. All I can do is say this is
3 my secret, I'd res-- I would hope you would respect it and keep it a
4 secret.

5 Q And that's what you're relying on here, this hope or
6 expectation without --

7 A To --

8 Q -- an agreement on the --

9 A To some degree, because there were some agreements as
10 well.

11 Q And that -- and you expect them to keep this a secret
12 forever on that basis; correct?

13 A Yes, I would.

14 Q And did you ever specifically tell Red Arrow that you
15 regarded the purge removal as a secret?

16 A Yes, I did.

17 Q And did they agree to keep that secret?

18 A To my knowledge, they did. They never --

19 Q Well --

20 A They never objected and said, oh, sorry, David, we're
21 going to walk out of your factory and tell other people exactly how
22 you achieve these things. -

23 Q Did they ever say yes, David, we will keep purge removal
24 a secret?

25 A Yes.

1 Q They did?

2 A Yes. And the process.

3 Q Who said that on behalf of -- of --

4 A I believe that John Shoop and Ron Ratz agreed that
5 Unitherm secrets were Unitherm secrets.

6 THE VIDEOGRAPHER: Excuse me, Counsel. This is the
7 end of Tape 2. We're off the record just briefly.

8 (End of Tape 2, beginning of Tape 3 on the video record)

9 (Lunch Break)

10 THE VIDEOGRAPHER: Okay. We're back on the record.

11 This begins Tape No. 3.

12 Q (By Mr. Schroeder) Mr. Howard, we were talking about the
13 trade secrets that are disclosed in the '027 patent that were not
14 revealed at the trade shows. And one of those trade secrets was
15 purge removal?

16 A That's correct.

17 Q Now, you've spoken of purge removal and you've also
18 spoken of infrared purge removal. My first question in this regard is
19 was it a secret, before the '027 patent issued, that it was
20 advantageous to remove the purge from the meat before applying the
21 liquid smoke?

22 A In some cases, yes. -

23 Q What -- can you explain what you mean by "in some
24 cases"?

25 A The -- obviously, there are different methods of taking

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2 FOR THE WESTERN DISTRICT OF OKLAHOMA

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COPY

15 DEPOSITION OF DAVID HOWARD, VOL. II

16 TAKEN ON BEHALF OF THE DEFENDANT

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18 IN OKLAHOMA CITY, OKLAHOMA

22 CITY REPORTERS, INC.
23 117 WEST PARK AVENUE, FIRST FLOOR
24 OKLAHOMA CITY, OKLAHOMA 73102
25 (405) 235-3376

25 REPORTED BY: KIMBERLY R. SULLIVAN, CSR

CITY REPORTERS, INC.

1 A No.

2 Q Hudson Foods?

3 A Hudson Foods and Willow Brook are the same
4 company.

5 Q Now, do you feel this is a complete list
6 that we now have of the customers who have purchased
7 Rapidflow ovens in the United States?

8 A No. There is two lines sold when Proctor &
9 Schwartz were a distributor, and they were to -- one
10 was Hatfield.

11 Q Hatfield?

12 A Yes.

13 And there was another one in Pennsylvania,
14 Devault.

15 Q Could you spell that?

16 A D-e-v-a-u-l-t.

17 Q And do we now have a complete list, do you
18 think?

19 A I believe so.

20 Q Now, can you identify any of these customers
21 who have purchased a Rapidflow oven at a later date,
22 after having first purchased and used a Rapidflow
23 oven?

24 A I'm sorry. I don't quite follow your
25 question.

1 you call your process was known only to companies and
2 people to whom Unitherm had disclosed that process
3 under obligations of confidentiality and secrecy?

4 A Well, in 1994, Unitherm sent out some news
5 bulletins, if you like, or some PR material, saying
6 that we had the process, and we had written to a
7 large part of the turkey industry.

8 We had done that again in 19-- -- I'm not
9 sure. I think it was 1996.

10 We issued some 500 videos that include snips
11 of the process in it.

12 So I would believe that there would have .
13 been other people that knew that there was a process
14 that could achieve all of the goals and objectives
15 that are stated in the patent.

16 Q Well, I'm not asking you whether people knew
17 that such a process existed. My question is whether
18 they knew what the process was.

19 So my question is: In May of 1997, is it
20 your belief that the only people or companies who
21 actually knew what the process was were the people in
22 the companies to whom Unitherm had disclosed that
23 process under obligations of confidentiality and
24 secrecy?

25 A I can't answer that question, other than to

1 say that other people would have known parts of the
2 information of the process.

3 None of them would have known everything on
4 the process, but they would have known parts.

5 Certainly, bearing in mind that we are
6 making equipment and that we don't produce the
7 product that's smoked turkey.

8 For us to take to retail -- for us to be
9 able to sell our equipment, we have to tell people
10 what the process is, what we're using it for.

11 So there would be people out there who would
12 know a certain degree of the process. How much of it
13 it is, compared to being able to operate it, I can't
14 judge that.

15 Q Well, let me put it to you this way,
16 Mr. Howard. In May of 1997, either your process was
17 a secret or it wasn't.

18 Which was it?

19 A Partially secret and partially not secret.

20 Q Well, when you say "partially not secret,"
21 what were the parts of it that were secret?

22 A In '97?

23 Q Yeah. May of '97.

24 A The infrared purge removal system. That was
25 certainly not commonly known --

1 Q . Would this be fair to say, that you can't
2 identify anyone who knew how to carry out this
3 process in May of 1997, other than the people to whom
4 Unitherm had disclosed the process under pledges of
5 secrecy and confidentiality?

6 A I can't say that. I don't know for sure.
7 My memory isn't --

8 Q Well, no. I'm asking you if you can
9 identify anyone.

10 A 1997.

11 Q May of '97.

12 A I'm not sure.

13 Q Well, I don't see how you can answer "I'm
14 not sure."

15 I'm asking: Can you identify anyone that --

16 A That knew -- that could have done this
17 process.

18 Q And wasn't under an obligation of secrecy to
19 Unitherm?

20 A I can't think of anybody off the top of my
21 head.

22 Q You don't know of anybody?

23 A Not off the top of my head today.

24 Q Have you given this question any thought?

25 A No.

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1 Q Had the process ever been the subject of a
2 publication anywhere?

3 A In May of 1997?

4 Q Yes.

5 A There would, as I said earlier, been certain
6 amounts of information released, either by mail, news
7 bulletins, that type of thing, by video.

8 Up until then, if we advertised it, we may
9 have only advertised it once.

10 Q Well, I'm not asking you whether there were
11 publications that made known the fact that such a
12 process existed.

13 But my question is: Were there any
14 publications that actually explained the process, so
15 that someone else would be able to use it?

16 A I can't remember.

17 Q You can't remember whether that existed or
18 not?

19 A No.

20 Q You don't know, at this point, of any such
21 publications? You can't identify any for us?

22 A Not off the top of my head here today.

23 Q So, as far as you know, it may have been
24 known in May of '97? -4-

25 A It is possible.

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1 do you?

2 A No. I never do the scheduling for the
3 exhibitions. Amanda Howard, my wife, she takes care
4 of all of the exhibitions and knows when to book
5 them, et cetera.

6 Q So could your answers be different, based
7 upon talking with your wife, concerning the time
8 needed or advance time needed to schedule those
9 presentations?

10 A It would.

11 MR. CASTRO: And, for the record,
12 that's all I have, other than to state that, at the
13 beginning of this deposition this morning, we made
14 good, I guess, on our promise yesterday concerning
15 some communications dealing with Armour Swift
16 companies, and, this morning, we did produce three
17 different documents, and they're Bates stamped
18 U-8092, 8093 and 8094.

19 That's all I have.

20 MR. SCHROEDER: No further questions.

21 THE REPORTER: Do you want to ask him
22 about reading and signing?

23 MR. CASTRO: Do you want to read and
24 sign --

25 THE WITNESS: No.

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